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No. 969

(Consolidated with Nos. 800 and 965)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,
Petitioner,

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR PETITIONER, THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

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Opinions Below

The opinion of the court below dealing with the inclusive tour charter concept (foreign phase), *Pan American World Airways* v. *CAB*, is reported at 380 F.2d 770, and reprinted in the Appendix at p. 1119a. The opinion of the U.S. Court of Appeals for the District of Columbia Circuit dealing with the inclusive tour charter concept (domestic phase), *American Airlines* v. *CAB*, is reported at 365 F.2d 939. The opinions of the Civil Aeronautics Board

and of the Examiners are reprinted in the Appendix as follows: [1]

Transatlantic Charter Investigation,
CAB Docket 11908

654a Recommended Decision of Examiner James S. Keith, September 21, 1962. Inclusive tour charters covered at 684a-685a, 711a-714a, 716a-718a, 728a-729a, 734a-736a, 751a.

826a Opinion of Board Affirming Examiner Keith, October 8, 1963, ITCs covered at 857a-859a, 861a.

1060a Opinion of Board Reconsidering ITC Question, March 11, 1966 (published September 30, 1966). ITCs covered at 1063a-1078a (majority) and 1078a-1080a (dissent).

Supplemental Air Service Proceeding,
CAB Docket 13795

44a Recommended Decision of Examiner Robert L. Park, August 27, 1965. ITCs covered at 100a-124a, 129a-136a.

332a Opinion of Board in Domestic Phase, March 11, 1966. ITCs covered at 336a-355a (majority) and 365a-384a (dissent).

517a Same, opinion on reconsideration, April 29, 1966. ITCs covered at 524a-528a.

543a Opinion of Board in Overseas/Foreign Phase, March 11, 1966 (published September 30, 1966). ITCs covered at 548a-553a (majority) and 560a-561a (dissent).

Jurisdiction

The judgment of the court below was entered July 20, 1967, and rehearing was denied September 29, 1967. This Court granted certiorari on January 29, 1968. Jurisdic-

[1] Herein, "App." means page references in the printed appendix, and "Tr." means page references in the original record which is in the custody of the Board.

tion is invoked under 49 U.S.C. § 1486(f) and 28 U.S.C. § 1254(1).

Question Presented

Whether the Civil Aeronautics Board has the authority to allow supplemental carriers, who are restricted to charter operations only, to operate a type of charter called "inclusive tour charter," which is a charter to a tour operator for the purpose of transporting an inclusive tour group assembled by the tour operator.

Statute Involved

The Federal Aviation Act of 1958, 72 Stat. 731, as amended by the Act of July 10, 1962, 76 Stat. 143, 49 U.S.C. §§ 1301 et seq. The 1962 Act is reprinted in full in the Appendix at pp. 173b-191b.

STATEMENT

Introduction

The American Society of Travel Agents, Inc. (ASTA), is the major association of travel agents, whose members operate more than 2,600 travel agencies throughout the United States and Canada. Among its members are most of the major tour operators, who are the principals in the typical inclusive tour charter arrangement.[2] ASTA has been a party in this case since 1961, and has supported the inclusive tour charter concept, in the belief that the concept will generate new travel, without serious diversion from existing travel.

There are approximately 6,000 travel agents in the United States, who promote and sell from 75% to 90% of all international air transportation originating in this country, and 32% of domestic air passenger sales amounting to approximately $1 billion annually. The U.S. scheduled carriers, three of whom are respondents here,

[2] App. 102a, 118a.

consist of eleven trunk carriers plus Pan American (which provides no domestic service), thirteen local service carriers, several carriers serving Hawaii and Alaska, and various helicopter carriers.

There are currently thirteen supplemental air carriers certificated by the Civil Aeronautics Board pursuant to the 1962 Act, six of whom are petitioners in No. 800.

Scheduled carriers are authorized to carry passengers on an individually ticketed or charter basis. Supplemental carriers may carry passengers only on a charter basis.

The principal types of "charter" which supplemental carriers may operate, as presently defined by the Civil Aeronautics Board, are *"military charter,"* i.e. charters to the Department of Defense for transportation of troops, recruits, etc., 14 C.F.R. 208.3(s)(1); *"single entity"* charter, as where a college charters and pays for a plane to transport its football team, 14 C.F.R. 208.3(i); *"pro-rata"* (or "affinity") charter, as where a club charters a plane for a vacation to Europe, each passenger paying his pro-rata share, 14 C.F.R. 208.3(h); *"airfreight"* charter, where an airfreight forwarder assembles small units and uses the charter to ship them as a consolidated unit, 14 C.F.R. 296.2(a); and *"inclusive tour"* charter, 14 C.F.R. 378, which is the subject of this case.

An *inclusive tour* is a vacation tour wherein all the basic elements—transportation, hotels, meals, sightseeing, etc.—are included in a single lump sum tour price.[2] An *inclusive tour charter* (herein sometimes called ITC for convenience and in accord with industry practice) is a charter by a carrier to a tour operator, who uses the aircraft space to transport a group of inclusive tourists assembled by him.

In the context of this case, inclusive tour charter has a more special meaning—it means an inclusive tour charter (a) where the aircraft is furnished by a supplemental

[2] Inclusive tours are also sometimes called all-expense tours or package tours.

air carrier, (b) where the tour operator's qualifications are approved by the Civil Aeronautics Board, and (c) where the details of the tour satisfy the comprehensive rules of the Board.[4] The main purpose of the rules is to discourage diversion from the scheduled carriers. For example, the inclusive tour price paid by the tourist must be 10% greater than the scheduled carrier fares for the same itinerary, and the tour must last at least seven days, and include overnight stops in at least three different places.[5]

According to a recent CAB press release, a total of 153 of such inclusive tour charters were operated in 1967, and indications are that 1968 results will be "at least double" that.[6]

Background to the 1962 Act

The recognized status of the supplemental carriers (formerly called irregular or nonscheduled carriers) may be said to have begun on November 15, 1955, when the Civil Aeronautics Board formally recognized them as a class of carriers distinct from the certificated route carriers, and found that their operations were in the public interest and would not adversely affect the scheduled carriers.[7] The Board granted the supplementals authority to fly as many charters as they wished, to any place, together with authority to fly individually ticketed flights not to exceed 10 flights per month in each direction between any two points.[8] The individually ticketed authority could be used on a regularly scheduled basis.[9]

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[4] 14 C.F.R. Part 378 (App. 411a).

[5] 14 C.F.R. § 378.2(b).

[6] CAB 68-8, February 12, 1968. The Board has just granted one tour operator alone authority to perform 245 inclusive tours to Hawaii between May 1968 and May 1969. CAB Release 68-33, March 12, 1968.

[7] H.Rept. 1177, 87th Cong. 1st Sess. 8 (1961), App. 36b-37b.

[8] Id.

[9] *American Airlines* v. *CAB*, 98 U.S. App. D.C. 348, 235 F.2d 845 (1956), *cert. den.*, 353 U.S. 905, at p. 848.

At that time, as now, the Civil Aeronautics Act required carriers to have certificates of public convenience and necessity,[10] but then as now, permitted certain carriers or classes of carriers to be exempted from the requirements of the Act upon a finding that compliance with such requirements— [11]

> ". . . would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operation of such air carrier or class of carriers. . . ."

In order to satisfy the requirements of the Act, in lieu of certificates the Board granted blanket exemptions to a number of supplemental carriers, and made the required findings of undue burden.[12]

The scheduled carriers appealed to the U.S. Court of Appeals for the District of Columbia Circuit, which held that the individually ticketed authority granted to the supplementals by the Board, by way of exemption rather than certificate, brought the supplementals' operations "much closer to the certificated services." [13] The court was unable to see why certification of the supplementals, as opposed to exemption authority, would be an "undue burden" on them; [14] and remanded for further findings on the point.

On January 28, 1959, the Board granted temporary certificates to a number of supplemental carriers, continuing the authority to conduct unlimited charter flights, and individually ticketed service not to exceed 10 flights per month in each direction between any two points.[15]

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[10] 52 Stat. 987 (1938), 49 U.S.C. 481(a), now Sec. 401 of the Federal Aviation Act, 72 Stat. 754 (1958), 49 U.S.C. § 1371.

[11] 49 U.S.C. § 496(b) (1938 Act); 49 U.S.C. § 1386(b) (1958 Act).

[12] *American Airlines* (1956), note 9 above, at p. 848.

[13] Id. at 853.

[14] Id.

[15] H.Rept. 1177 at p. 9, App. 37b-38b.

Again the scheduled carriers appealed, and again the court found the Board's action legally insufficient,[16] because (1) the certificates failed to specify the points between which service was to be provided, contrary to the requirements of the Federal Aviation Act; [17] (2) the certificates contained a limitation of 10 flights per month, contrary to the Act, which prohibits any restriction on the carrier's right to set the frequency of its schedules; [18] and (3) even the smallest carriers were found "fit" to provide the broad, nationwide service described in the certificates. The Court said that if the requirements of the Act [19]

> ". . . interpose an insuperable obstacle to the full development of supplemental air service, which they may well do, the problem is for the Congress. The Board should present it there."

Accordingly, the Board submitted to Congress proposed legislation, which was introduced in 1960 as S.1543 and H.R.7593.[20] Hearings were held in May, 1960, but it was decided that time was too short to properly consider the issues, and a temporary bill was enacted to maintain the status quo and permit further consideration in the next Congress.[21]

The Hearings and Reports Preceding the 1962 Act

On May 25, 1961, the Board's bills were reintroduced as S.1969 and H.R.7318.[22] These bills would have authorized the Board to issue certificates without specifying

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[16] *United Air Lines* v. *CAB*, 108 U.S.App.D.C. 1, 278 F.2d 446 (1960), vacated, 364 U.S. 297.

[17] 49 U.S.C. § 1371(e)(1).

[18] 49 U.S.C. § 1371(e)(4).

[19] *United Air Lines*, note 16 above, at p. 449.

[20] 86th Cong. 2d Sess.

[21] H.Rept. 1177 at p. 9, App. 39b.

[22] 87th Cong. 1st Sess., reprinted at App. 1b and 7b.

the terminal and intermediate points, and with such limitations as to frequency of service, size or type of equipment, or otherwise, as would assure that the service so authorized remained supplemental to the service of the certificated route carriers.[23] Hearings were promptly held, on June 20, 21 and 23, 1961, in the House,[24] and on June 26, 29 and 30 in the Senate.[25]

The Board's bills did not emphasize a charter role for the supplementals, but merely defined "supplemental air transportation" as air transportation rendered pursuant to a certificate containing limitations to insure that the service was in fact supplemental to the service of the route carriers.[26] The term "charter" was not defined, or even mentioned.

The bill supported by the supplementals, on the other hand, authorized "unlimited charter operations," and defined charter to mean merely any agreement for the use of the entire capacity of an aircraft.[27] It also expressly authorized individually ticketed operations to the extent of 192 flights per year (or an average of 16 flights per month).[28]

At that time, the CAB regulations contained a blanket prohibition on charters to travel agents[29] (and still do,

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[23] Thus characterized in H.Rept. 1177 at p. 11, App. 42b.

[24] Hearings before Subcommittee of House Interstate and Foreign Commerce Committee, 87th Cong., 1st Sess. (1961) (herein called *House Hearings*). Some portions are reprinted at App. 207b.

[25] Hearings before Aviation Subcommittee of Senate Commerce Committee, 87th Cong. 1st Sess. (1961) (herein called *Senate Hearings*). Some portions are reprinted at App. 217b.

[26] S.1969 and H.R.7318, Sec. 1, App. 1b and 7b.

[27] H.R.7512, 87th Cong. 1st Sess., App. 13b.

[28] Id.

[29] 14 C.F.R. 207.1, which is still in effect (though no longer applicable to supplemental carriers) defines charter to mean engagement of the entire capacity of an aircraft, "(2) By a person *(no part*

[Footnote continued on page 9]

except for inclusive tour charters) arising from some undesirable experiences with promoters selling point-to-point transportation to individual members of the public, and using so-called "charters" to carry them.[30] The inclusive tour charter concept, whereby a tour operator sells tours utilizing the charter for the to-and-from transportation element of the tour, was not then known in the air travel industry in this country.

A witness for the scheduled carriers opposed "unlimited" charters on the assumption that this would bring back the alleged evils that led to the original ban on charters to travel agents:[31]

> "Now, if your scheduled airlines are going to assume, as they are required to under the Act, the obligation to provide this service day in and day out at the fares and their tariffs, which remain the same throughout the full year, there has to be some protection in there against another operator coming in under the guise of charter and simply running a full passenger load any day he is able to get a full passenger load."

He added,[32]

> "This is actually individually ticketed service under the guise of charter. It is one of the problems in the field."

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of whose business is the formation of groups for transportation or the solicitation of sale of transportation services) for the transportation of a group of persons as agent or representative of such group." (Emphasis added.)

Part 295, governing transatlantic charters by supplemental carriers (except inclusive tour charters, which are covered by Part 378), had a similar prohibition. See App. 901a, where Sec. 295.2(b)(1)(ii) is set forth substantially as it was in 1961.

[30] See *Senate Hearings*, p. 268; App. 219b.

[31] *Senate Hearings*, p. 266. Even CAB Chairman Boyd initially made a similar assumption. *Senate Hearings*, p. 36.

[32] Id. p. 268.

He added,[33]

> "Now, part of my point there is that because of the complexity of the problems that are involved, this is an area in which I believe there has to be a certain amount of flexibility for the administrative agency to promulgate regulations and to change them from time to time. You have a great deal of risk, if you attempt to adopt one definition to last forever, covering all of the various phases of the problem, that you discover that you just did it wrong."

After the hearings, the scheduled carriers submitted a statement to the House, directed to the proposed definition of charter in the bill supported by the supplementals, H.R.7512. The statement closed with the following:[34]

> "The basic guideline being this clear, an appropriate function of the Board is to prescribe regulations, as needed from time to time, to prevent abuses through ticket agents, solicitation of the general public, or other devices for conducting individually ticketed operations under the guise of 'charter'. There is a substantial danger that an attempt by the Congress to spell out, in full detail, the limits of 'charter' would import an unnecessary rigidity into the field, thus hampering ability of the Board to deal with changing circumstances, as well as entailing extremely detailed legislation.
>
> "For such reasons, our view is that there is no present need for the Congress to undertake a detailed definition of 'charter' in the Federal Aviation Act."

The Senate Committee reported a substantially revised S.1969 on August 8, 1961.[35] As revised, it allowed individually ticketed operations under such limitations as the

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[33] Id. p. 270.

[34] *House Hearings*, p. 243. The same statement was submitted to the Senate, *Senate Hearings*, p. 278.

[35] S.Rept. 688, 87th Cong. 1st Sess. (1961), App. 91b. The Senate version of the bill appears at App. 92b-103b.

Board might find necessary to prevent undue diversion from the route carriers. Contrary to the desire of the scheduled carriers, the revised bill also included a definition of charter, which followed the CAB's definition in Part 207,[36] including the prohibition on charters to travel agents, but the Senate Committee added an exception where the transportation offered was part of an all-expense tour.[37] This was the first time that all-expense tour charters (now called inclusive tour charters) were mentioned in the language of the proposed legislation. The effect of the Senate definition was to require that the CAB allow the supplementals to operate the inclusive tour type of charter, subject to proper regulations.[38] The Senate Report explained that this was proper because inclusive tour charters were "a very different sort of service from individually ticketed transportation."[39]

The House reported a revised H.R. 7318 on September 13, 1961. This was substantially the form in which it was eventually enacted.[40] Supplemental air transportation was defined as charter trips "to supplement the scheduled service,"[41] but "charter" was not defined. No individually ticketed authority was allowed at all, except in very limited peak-time circumstances.[42] As to the lack of a definition of "charter," the House Committee followed the scheduled carriers' position:[43]

> ". . . authority to define charter services should be left, as at present, with the Board, subject to the limi-

[36] 14 C.F.R. § 207.1, which governs domestic charters by the scheduled carriers.

[37] S.Rept. 688 at p. 1, App. 92b.

[38] Id. pp. 13-14, App. 120b-121b.

[39] Id. p. 14, App. 121b.

[40] H.Rept. 1177, 87th Cong. 1st Sess. (1961), App. 17b. The House version of the bill appears at App. 18b-30b.

[41] Id. p. 1, App. 18b.

[42] Id. p. 2, App. 20b-22b.

[43] Id. p. 11, App. 42b.

tations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications."

The Transatlantic Charter Investigation

In the meantime, the Transatlantic Charter Investigation, the ancestor of the instant case, had begun before the Civil Aeronautics Board, to consider whether one or more carriers should be certified to conduct transatlantic passenger charters, and if so, under what conditions.[44]

At the prehearing conference on August 18, 1961, ten days after the Senate Report was issued, there arose a dispute as to whether the forthcoming hearings should include evidence directed to the inclusive tour charter concept. The Examiner referred the question to the Board,[45] and on October 18, 1961, the Board stated that the ITC concept was within the scope of the proceeding, even though then prohibited by Part 295 of the CAB regulations (which governs transatlantic charters by supplemental carriers).[46]

The evidentiary hearing was held April 9 through May 2, 1962, during which considerable evidence was introduced on the practicalities, benefits and dangers of ITCs. ASTA on behalf of the travel agent industry and practically all of the supplemental carrier parties supported the ITC concept.[47] The route carriers opposed the concept. The CAB Bureau of Economic Regulation was originally noncommittal, but when it filed its brief on July 26, 1962, for the first time it came out in support of ITCs.[48]

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[44] Order E-16023 (Nov. 14, 1960), App. 617a-618a.

[45] Prehearing Report, August 28, 1961, Tr. 12652-3.

[46] Order E-17607, App. 644a-647a.

[47] The transcript of the hearing appears in the record, Tr. 12790-15196.

[48] Brief of Bureau Counsel, filed June 26, 1962, Tr. 19339.

The Conference Committee Report

Returning to events in Congress, on June 28, 1962, the Senate and House conferees finally reached agreement and filed their conference report.[49] The compromise bill was substantially the version adopted by the House, except that the supplementals were given two years to phase out their existing individually ticketed operations. Because of an accident involving a supplemental carrier, and one or two strandings of charter groups,[50] new provisions were added dealing with liability insurance and performance bonds.[51] The conference committee without explanation dropped the Senate definition of charter to allow the supplementals to operate ITCs.

The statement of the House Managers, attached to the conference report, noted that the Senate bill would have permitted individually ticketed services on a permanent basis, while the House insisted on none at all (except limited peak-time service).[52] But on the question of why the Senate's charter definition was dropped, the statement, like the conference report itself, gave no sign of deviation from the explanation in the House Report, to the effect that the definition was to be left up to the Board.

The next day, June 29, six of the 17 members of the conference committee (all of the members were called "managers") made speeches on the floor to the effect that charters to travel agents were evil or illegal, or that the conference committee had banned them.

Senator Cotton opposed charters to travel agents; he hoped the Board would continue to be firm to prevent abuse of charter service and he added:[53]

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[49] Conf. Rept. (H. Rept. 1950), 87th Cong. 2d Sess. (1962), App. 173b.

[50] See 108 Cong. Rec. 12284, 12322 (June 29, 1962); App. 749a.

[51] App. 176b-177b.

[52] App. 199b-200b.

[53] 108 Cong. Rec. 12284 (June 29, 1962).

> "The Board has a serious obligation to see that charter services do not become individually ticketed services through subterfuge or abuse."

Senator Scott opposed charters to travel agents, because, he said,[54]

> ". . . a travel agent could charter an airplane, and then offer the seats to the general public at less per head than the tariff fares . . ."

Senator Thurmond stated that he was advised that the CAB Bureau of Economic Regulation had advocated inclusive tour charters (which was true, see note 48 above), which he said would be "intolerable"; the congressional intent was that the supplementals [55]

> ". . . shall not conduct any individually ticketed business, but, rather, shall concentrate exclusively on full plane load charters."

Over on the House side, Representative Walter (not a conferee and not even a member of the House Committee) asked what had happened to the provision which would have put the travel agent "in position to engage in rate cutting." [56] Representative Williams (a conferee) replied that the provision had been dropped.[57] Representative Harris confirmed the point, and read a statement which included the comment that charter does not include "any device where individually ticketed services would be offered or performed under guise of charter." [58] Mr. Walter thanked Mr. Harris for the assurance that the bill would not allow [59]

> ". . . all-expense tours or other devices for destroying the meaning of charter and engaging in a type of in-

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[54] Id. at 12284.

[55] Id. at 12285.

[56] Id. at 12322.

[57] Id. at 12322.

[58] Id. at 12322.

[59] Id. at 12323.

dividually ticketed authority under some guise or other."

Representative Collier then made a speech in language word-for-word identical to the statement previously read by Mr. Harris.[60]

The compromise bill was approved by both houses, and by the President, and became law on July 10, 1962.[61]

Further Proceedings Before the CAB

Back at the Transatlantic Charter proceeding, on September 21, 1962, Examiner James S. Keith filed his recommended decision.[62] He found that ITCs would be unduly diversionary to Pan American and Trans World Airlines, whose earnings were then at a low level, and concluded that the time was not "propitious" for the introduction of this concept.[63] He did not discuss the legislative history of the Act of July 10, 1962, or otherwise consider whether the Board had power to allow ITCs.

On October 8, 1963, the Board affirmed the examiner's reasoning with respect to inclusive tour charters.[64]

In the meantime, on July 12, 1963, a parallel proceeding had begun before the Board, called the Suppemental Air Service Proceeding.[65] Its purpose was to consider the advisability of certificates for supplementals in interstate transportation and in foreign transportation other than the transatlantic area. The scope of the proceeding ex-

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[60] Id. at 12324, see note 58 above.

[61] 76 Stat. 143, Public Law 87-528.

[62] App. 654a.

[63] Id. at 736a.

[64] App. 826a. This decision was not published until March 3, 1964, App. 777a, because it was necessary to have the President's approval of certain other aspects of the opinion which involved foreign air transportation, 49 U.S.C. § 1461.

[65] App. 1a.

pressly included the issue of inclusive tour charters.[66] On August 27, 1965, Examiner Robert L. Park issued his recommended decision.[67] He analyzed the ITC concept at some length, finding that it posed "no significant threat to the certificated route carriers,"[68] and recommended that it be approved, with several restrictions to prevent abuse and diversion.[69]

Shortly after Examiner Park's decision in the Supplemental Air Service Proceeding was published, the Board reopened the Transatlantic Charter Investigation to reconsider the ITC question.[70]

On March 11, 1966, the Board issued several orders deciding the Supplemental Air Service and Transatlantic Charter proceedings. One order related only to the domestic area, and this was published immediately.[71] This order (1) certificated a number of supplementals to fly charters, including ITCs, anywhere in the 50 states,[72] and (2) adopted the basic regulations (Part 378) governing ITC operations.[73]

The other orders related to the overseas and foreign area,[74] and these were not published until September 30, 1966, after the President had approved certain portions of them.[75] These orders (1) certificated a number of sup-

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[66] App. 19a.

[67] App. 44a.

[68] App. 135a.

[69] App. 100a-124a, 129a-136a, 205a.

[70] App. 960a, September 23, 1965.

[71] Order E-23350, App. 332a.

[72] App. 391a-410a.

[73] App. 411a-436a.

[74] For the definitions of domestic (interstate), overseas and foreign air transportation, see 49 U.S.C. § 1301(21).

[75] Under 49 U.S.C. § 1461, the issuance and terms of certificates authorizing overseas and foreign air transportation are subject to the approval of the President.

plementals to fly charters, including ITCs, between the United States and designated overseas and foreign areas,[76] and (2) amended Part 378 to extend it to overseas and foreign transportation.[77]

The Judicial Reviews

The order dealing only with the ITC concept (domestic phase) did not require Presidential approval, and so was final. The scheduled carriers appealed it to the United States Court of Appeals for the District of Columbia Circuit, which affirmed the Board on July 19, 1966.[78] The only question discussed on appeal was whether the floor speeches prevented the Board from allowing ITCs; the court concluded that the floor speeches did not restrict the Board's preexisting authority to define charter so as to include the ITC concept.[79]

The orders dealing with the ITC concept (overseas and foreign phase), which treated the concept exactly the same as in the domestic phase, were published on September 30, 1966. Rather than seek certiorari on the domestic phase, the route carriers appealed the foreign phase to the U.S. Court of Appeals for the Second Circuit, which reversed, on the grounds that the floor speeches prevented the Board from allowing ITCs.[80]

From that decision the Board, the suppemental carriers, and ASTA, sought certiorari to resolve the conflict between the Second and District of Columbia Circuits. Certiorari was granted on January 29, 1968.

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[76] Orders E-24237, E-24240, and E-24242, App. 543a, 1060a and 1097a.

[77] Orders E-24238 and E-24240, App. 596a and 1060a.

[78] *American Airlines* v. *CAB*, 365 F.2d 939 (D.C. Cir. 1966).

[79] The court said "the Board had preexisting authority to determine the definition of charter . . ." and that "Congress did not intend to withdraw this authority." 365 F.2d at 944.

[80] Decision below, *Pan American World Airways* v. *CAB*, 380 F.2d 770 (2d Cir. 1967), App. 1119a.

SUMMARY OF ARGUMENT

I. The Floor Speeches Did Not Restrict The Board's Pre-existing Authority to Allow Inclusive Tour Charters

At the time of the 1961 hearings, the supplementals wanted the new concept of ITCs, but the Board's rules prohibited any charter whatever to a travel agent, which ruled out ITCs. The Senate Committee agreed that the supplementals should have ITC authority, and wrote a bill requiring the Board to allow ITCs.

The scheduled carriers did not want the supplementals to have any authority to charter to travel agents, because, they claimed, it would be used as a subterfuge for individually ticketed operations. The House Committee knocked out the Senate ITC proviso, explaining that the definition of charter should be left up to the Board, "as at present."

At the Senate-House conference, the House version prevailed, and the conference report gave no indication of any deviation from the reasoning expressed by the House Committee, or any indication that any of the Board's previous powers to define charter were to be restricted. Thus, up to the moment the first floor speech was made, the legislative record was clear that the definition of charter, and the discretion whether to allow ITCs (assuming only that ITCs were consistent with the general policies of the Act) were being left to the Board, which had always had that discretion.

On June 26, 1962, the CAB Bureau of Economic Regulation filed a brief in the Transatlantic Charter Investigation, for the first time coming out in favor of ITCs. The floor speeches were made three days later.

The speeches expressed the views of a minority of the conference committee, on a point which the full committee had either not considered or had decided to ignore, which in either case had the effect of ratifying the stated view

of the House Committee. The speeches were not competent to modify that ratification, even had there been language in the bill capable of being interpreted as restricting the Board's discretion on the point, which there was not.

Perhaps even more important, the speeches were based on an erroneous understanding of the ITC proposal. The speakers feared that ITCs would be used as a subterfuge to enable the supplementals illegally to reenter the individually ticketed market, a fear which upon analysis is totally misplaced, since the ITC by nature is unattractive to the great bulk of the scheduled carriers' individually ticketed traffic, and is made even less attractive by the Board's regulations which require the ITC to cost 10% more than scheduled transportation, to last seven days, and to make three overnight stops.

II. Inclusive Tour Charters Are Consistent With the Policy of the 1962 Act

If the floor speeches do not control this case, as clearly they do not, then the remaining question is whether the Board's finding that ITCs would "supplement the scheduled service," as they must under the 1962 Act, was rational and supported by substantial evidence.

That finding depends primarily on how much diversion ITCs may cause from the scheduled carriers' traffic. The Board found that diversion would not be significant, considering (1) that the inherent nature of ITCs, together with the tight restrictions imposed on them by the Board, make them unattractive to the vast majority of scheduled passengers; (2) that the British aviation authorities, who have had many years' experience with ITCs, have found that they do not cause material diversion; and (3) that the experience of the Interstate Commerce Commission with respect to motor bus ITCs has been that diversion has not been demonstrated.

The Board's finding was rational and supported by substantial evidence; indeed, no other finding would have been.

ARGUMENT

I. The Floor Speeches Did Not Restrict the Board's Pre-existing Authority to Allow Inclusive Tour Charters

Section 204(a) of the Federal Aviation Act of 1958 empowers the Civil Aeronautics Board to make [51]

> ". . . such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out the provisions of . . . this Act."

So long as the Board acts consistently with statutory guidelines, it presumably has the authority to define "charter," which is to say, has the authority to define what kind of charter traffic the supplementals may carry.

The question, of course, is, what about those floor speeches? Do they establish a statutory guideline which prevents the Board from defining charter so as to include ITCs? They undoubtedly were *intended* to have that effect. We say they are not competent to have that legal effect.

1. *To Allow the Speeches to Control the Meaning of the Act is Contrary to Common Sense*

We think what happened was this: during the hearings there was some reference to an alleged abuse that existed many years ago, whereby a promoter would charter a supplemental carrier and use that charter to fly travelers from one place to another.[52] Elsewhere the same witness referred to a travel agent advertising in the papers for passengers, and when he had assembled a planeload he would fly them to their destination.[53] This, of course, if true, was a flagrant abuse of the statutory plan that scheduled point-to-point, individually ticketed transporta-

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[51] 49 U.S.C. § 1324(a), 72 Stat. 743.

[52] *Senate Hearings*, p. 268; App. 219b.

[53] *Senate Hearings*, p. 267.

tion should be furnished only by scheduled carriers, not by travel agents or anyone else. This abuse, if it ever existed, was stopped in 1951, when the Board prohibited charters to persons acting as travel agents.[84]

During the hearings the scheduled carriers raised this spectre—it said that if charters to travel agents are allowed, the same abuses as described above would recur.[85] Even Chairman Boyd of the Board may have shared this first-glance reaction to a charter to a travel agent,[86] but it must be recalled that ITCs were a new concept, not then known in the air travel industry in this country.

Since the Board at that time did not allow any charters to travel agents,[87] the scheduled carriers felt safe in merely fighting to eliminate the Senate definition which would have required the Board to allow ITCs. Its reasonable-sounding approach was, "there is no present need for the Congress to undertake a detailed definition of 'charter' in the Federal Aviation Act."[88] That is, let's leave it up to the Board. It succeeded in persuading the House Committee to take this approach.

The Senate Committee, realizing that legitimate ITCs were not capable of the kind of abuse which the scheduled carriers professed to be alarmed about, did not accept the scheduled carriers' position, and since the Board did not at that time allow charters to travel agents, the Senate Committee was aware that it would have to define charters legislatively in order to validate ITCs.

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[84] *Senate Hearings*, p. 268; App. 219b.

[85] *Senate Hearings*, pp. 266, 268, 270; *House Hearings*, p. 243, all fully quoted at notes 31 through 34 above.

[86] *Senate Hearings*, p. 36.

[87] Parts 207 and 295, see note 29 above.

[88] *House Hearings*, p. 243, quoted at note 34 above.

After both House and Senate reports had been published, nothing more was heard of ITCs until the day of the speeches. In the meantime, there was a crash by a supplemental carrier while carrying a military charter, and in view of that, and a previous crash of a financially marginal supplemental while carrying a football team charter, and one or two strandings of some civilian pro rata charters,[89] criticism was mounted against the supplementals as a group. The attention of the committees was devoted to working up requirements relating to liability insurance and performance bonds, which eventually went into the bill.[90]

The conference committee had several long sessions to try to resolve the differences on the individually ticketed authority.[91] The Senate insisted that the supplementals be allowed some such authority, but the House was equally insistent to the contrary, and in order to have a bill at all, the Senate finally gave in and accepted the token concession that the supplementals could have two years in which to phase out their existing individually ticketed operations.[92]

Then on June 26, 1962, two days before the conference committee published its report, the CAB Bureau of Economic Regulation filed a brief in the Transatlantic Charter Investigation before the Board, for the first time supporting the ITC concept.[93] One can imagine the consternation this caused among the scheduled carriers, and one can easily understand that they must have felt the need to do something immediately, before the bill was passed.

The rest is plain. Some of the conferees accepted the alarums about travel agents running individually ticketed

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[89] See note 50 above.

[90] Sec. 4; App. 176b-177b.

[91] 108 Cong. Rec. 12320 (1962).

[92] Statement of Senator Monroney, 108 Cong. Rec. 12283 (1962).

[93] Tr. 19339, see note 48 above.

service under the guise of an ITC, and on June 29, in an atmosphere of excitement and haste, they declared that the Board must not allow ITCs.[94]

The conference committee as a whole, however, comprising 17 members, either did not consider ITCs, or if it did, failed to *do* or even *say* anything about them. In either case, the legal effect was to place a stamp of approval on the record the way it then stood, which was, the definition of charter was up to the Board. The speeches did not represent the conference committee; they represented only six out of 17 members of that committee, who did not even bother to file a written dissent; in the circumstances they cannot be held to express the view of the full committee. If the majority of the committee had wanted to ban ITCs, all they had to do was add a simple proviso banning ITCs to the first section of the bill which defined supplemental air transportation.

As the District of Columbia court noted, the Board had preexisting authority to allow the supplementals to operate ITCs.[95] Given this preexisting authority, what was it in the 1962 Act which took it away? Nothing in the Act does so expressly or impliedly; the Act is silent as to ITCs or any other restriction on the type of traffic the supplementals may carry, beyond the broad injunction that the traffic must be charter traffic, and the service offered must "supplement the scheduled service." If the Act itself does not take the authority away, surely six speeches, unsup-

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[94] See quotations at notes 53 through 60 above.

[95] 365 F.2d at 944. The doubts voiced in 1960 by the District of Columbia Circuit as to the authority of the Board to allow operations of the supplemental carriers were addressed to the individually ticketed authority; no question was ever raised about the right of the supplementals to fly charters, either under a blanket exemption, or under a certificate with exemption as to particular details. *United Air Lines* v. *CAB*, 108 U.S. App. D.C. 1, 278 F.2d 446 (1960). And see *American Airlines* v. *CAB*, 235 F.2d at 853 (1956), quoted at note 13 above.

ported by any language in the bill, cannot be given that effect. The District of Columbia Circuit properly found that "Congress did not intend to withdraw this authority." [96]

2. *To Allow These Speeches To Control The Meaning of The Act is Contrary to Established Rules of Statutory Construction*

The views of the speakers were in conflict with the officially stated views of the House Committee, to the effect that the Senate definition of charter was being dropped because "the authority to define charter services should be left, *as at present*, with the Board. . . ." [97] (Emphasis added.) Since this declaration by the House Committee, whose views prevailed, was in direct response to the supplementals' request for ITC authority, it is inconsistent with saying, as some of the speakers did, that the bill denies the Board authority to allow ITCs. That is, the supplementals said, "Define charter so as to give us ITC authority." The House Committee replied, "No, we will leave the power to define charter with the Board, where it is now." This is an affirmance, not a denial, of the Board's power to allow ITCs. Floor speeches in conflict with committee reports are not given controlling weight.[98] As the District of Columbia Circuit said, such a conflict [99]

> ". . . must give way to the generally accepted maxim of statutory construction that reports by the legislative committees responsible for formulating the legislation must take precedence in event of conflict over statements in the legislative debates on the floors of the houses of Congress. [citing cases]"

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[96] 365 F.2d at 944.

[97] H. Rept. 1177, 87th Cong., 1st Sess. 11 (1961); App. 42b.

[98] *United States* v. *Wright Wood Dairy Co.*, 315 U.S. 110, 125 (1942), *Duplex Co.* v. *Deering*, 254 U.S. 443, 474 (1920).

[99] 365 F.2d at 949.

3. *To Allow These Speeches to Control the Meaning of the Act is to Honor the Error on Which They Were Based*

If the spectre raised by the scheduled carriers before certain members of Congress had any basis in fact, i.e., if travel agents under the concept of ITC could charter a plane and then sell point-to-point transportation to the traveling public, the case for ITCs would fall because they would be a guise for allowing the supplementals to go back into individually ticketed operations, something which the 1962 Act took away from them.

But such a notion is absurd. Legitimate ITCs inherently, by their very nature, are unattractive to the vast majority of scheduled travelers. In order for them to be economically feasible to the promoters, they must be rather tightly regimented and tailored to suit large masses of people, which immediately rules out most air travelers, either because of the round trip itinerary and long duration, or because of the general appeal of the services—the catering to middle and lower income, the treatment as novice tourists, the being in extended close contact with strangers.[100]

Moreover, the Board, as it would have been expected to do, has codified the inherent attributes of ITCs, and imposed several additional restrictions, to rule out possible abuses—the chief of which being that the tour price must be 10% more than the scheduled fares for the same itinerary.[101] It is noted that violations of the Board's rules is now subject to criminal and civil sanctions.[102] As discussed below, pp. 28-30, past experience with motor bus ITCs in this country and with air ITCs in Europe (neither of which has a 110% price requirement) has shown no such abuses.

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[100] App. 1070a.

[101] 14 C.F.R. 378.2(b)(4).

[102] 49 U.S.C. §§ 1471(a) and 1472(a).

II. Inclusive Tour Charters Are Consistent With The Policy of The 1962 Act

As noted above, there is no merit to the notion that ITCs could be used as a subterfuge for individually ticketed operations. However, there is a less frightful, and more tenable fear raised against ITCs, which is that they may divert too much of the scheduled carriers' own inclusive tourist traffic. It is to this fear that Examiner Park and the Board addressed themselves. It should be noted that this more tenable argument was *not* the one which the scheduled carriers emphasized to Congress.

This argument is addressed to Agency discretion, not to principles of statutory construction. The Board is the Agency which Congress has made responsible for the promotion and regulation of the air transportation industry.[103] Because of its responsibility, and its expertise, its findings and judgments are presumptively correct, and reversible only if arbitrary or not supported by substantial evidence.[104]

1. *The Findings in This Case*

Examiner Park found that the scheduled carriers' inclusive tour traffic, while not neglected by any means, was "nowhere near its true potential."[105] He saw a "promising future" for ITCs,[106] and concluded that a controlled ITC program for the supplementals—[107]

> ". . . offers no significant threat to the certificated route carriers."

In fact, he concluded, "In the long run the conversion of additional segments of the traveling public to air travel

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[103] 49 U.S.C. §§ 1302, 1324.

[104] See, e.g., *NLRB* v. *Hearst Publications*, 322 U.S. 111, 129, 131 (1944); *Hardin* v. *Kentucky Utilities Co.*, 390 U.S. 1 (1968).

[105] App. 111a.

[106] App. 113a.

[107] App. 135a.

will broaden the base for air transportation and ultimately will inure to the benefit of the entire air transportation industry." [108]

Affirming, the Board found that "Clearly there is no showing that a five-year experiment in tour operations would pose any significant threat to the continued growth and prosperity of the route carriers." [109]

And in its opinion authorizing ITCs in the Transatlantic area, the Board said,[110]

> ". . . it is unlikely that the operation of inclusive tour charters can pose any significant threat to the established route operators."

There is ample evidence to support these conclusions, and nothing but unsupported arguments to refute them. Consider, for example, a tour leaving New York Saturday morning, spending several days in Mexico City, then to Trinidad for a few days, then to Rio for a week, returning to New York on Friday, the 14th day. The tour would include hotels, meals, sightseeing and entertainment. It is clear that the only persons diverted from scheduled traffic would be people who want that very tour, including the regimentation, the rigid schedule, and being in extended close contact with strangers, and being treated as novices.[111] How many of these takers would have taken a tour using a scheduled airline? The Board concluded there would not be many.

In the Supplemental Air Service case the Examiner found that only 9% of the scheduled traffic consisted of tour passengers domestically, and not over 15% internationally.[112] In the Transatlantic Charter Investiga-

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[108] App. 134a.

[109] App. 849a.

[110] App. 1070a.

[111] Board Opinions, App. 344a-345a, App. 1070a.

[112] App. 111a.

tion, the evidence showed that less than 13% of Pan American's economy passengers were persons traveling on package (all-expense) tours,[113] and of these "much more than half" were individual tourists,[114] which means the group tourists would be "much" less than 6.5%. Since inclusive charter tours are group tours, and large groups at that, it is probable that to the extent they appeal to the scheduled passengers at all, it will be primarily to those on group tours, who, as stated, comprise "much" less than 6.5% of scheduled passengers. If group tourists comprise 3% of scheduled passengers, the maximum threat of diversion would probably be some fraction of that, depending on intensity of marketing, availability of equipment, public acceptance, similarity of itinerary, value of the tour for the price, etc. The bulk of the ITC tourists would be newly generated traffic.

2. *The British Experience With ITCs*

The British experience with ITCs has been that diversion is in fact not a problem, even though British ITCs need only cost 100% of scheduled fares, rather than 110%, as the CAB has ruled for American ITCs.[115] Examiner Park dealt with the British experience at length.[116] He found that the amount of ITC traffic departing from Britain (on both British and foreign carriers) increased from 249,000 in 1960 to 1,050,000 (estimated) in 1964, more than a quadrupling in four years.[117] He found that most of these passengers were young, of lower to middle income, many of whom were first-time travelers.[118] He said, "it is clear that the low cost British

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[113] Testimony of Pan American official, Tr. 15176. See also Examiner's decision, App. 713a.

[114] Tr. 15178.

[115] App. 118a.

[116] Examiner's Decision, App. 113a-124a.

[117] Id., App. 114a-115a.

[118] Id., App. 116a, 119a, 120a.

IT charters have been highly successful in opening up a sizeable new traffic market of persons not previously using air service, to the primary benefit of the low or middle income individual who would not otherwise fly." [119]

The British system is to require advance approval of ITCs, and approval is granted after consideration of factors such as likelihood of diversion.[120] The Examiner found "no convincing showing that the IT charter development [in Britain] has had any material adverse impact upon the scheduled carriers," [121] citing an ICAO study and statements of British regulatory authorities.[122] See also the 1965 Annual Report of the British Air Transport Licensing Board,[123] which states:

> "11. In 1961, when we first addressed ourselves to the licensing of inclusive tours, we were confronted with two rival theories. The theory of the charter companies was that I.T. charters not only catered for people who were not prepared to meet the cost of holidays based on scheduled service rates, but also had the effect, because of the especially economical facilities offered, of attracting others to air travel for the first time. Many of the latter, having been introduced to air travel in this way, would become airminded and therefore more likely in future to use the scheduled air services as a normal means of travel in preference to rail or boat services. So far therefore from diverting traffic from the scheduled carriers, the charter operators were in the long run

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[119] Id., App. 118a.

[120] Id., App. 117a.

[121] Id., App. 120a.

[122] Id., App. 118a-120a.

[123] This report was published too late to include in the record before the Examiner. A photocopy of excerpts is attached as Attachment A to this brief. An earlier report, which is in the record, stated that ITCs "should not involve material diversion." ASTA Exh. 13 (1958 ATLB Report), p. 11, par. 12, Tr. 17072.

conferring a positive benefit upon them by providing an ever-expanding market for their services. The theory of B.E.A., on the other hand, has consistently been that it is obvious that the charter services, operating as they do at peak periods of the year, must inevitably skim off the cream of the holiday traffic which would otherwise accrue to the scheduled services.

"12. On our first approach to the problem it appeared to us that to strike the right balance between these opposing views was a matter of some nicety (see paragraph 22 of our first Report). But *after four years' experience of the inter-action of the two types of traffic, we can find no evidence that inclusive tours have been responsible for any material diversion of traffic from the scheduled carriers.* On the contrary, B.E.A.'s total passenger traffic continues to grow at much the same rate as before the inclusive tour charter traffic reached its present proportions." (Emphasis added.)

3. *The ICC Experience With ITCs*

The Interstate Commerce Commission experience with ITCs by motor bus is relevant to the diversion question. In the *Tauck Tours* case, Division 5 of the ICC (eventually affirmed by this Court) stated: [124]

"Thus, a broker offering the public a legitimate all-expense tour may obtain charter service with its many advantages for this type of operation and the regular-route common carrier may still enjoy the type of traffic which it transports and the service which it has been authorized to perform *without the threat of destructive competition.*" (Emphasis added.)

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[124] *Tauck Tours Inc. Extension*, 52 M.C.C. 378, 377 (1951) affirmed by full Commission, 63 M.C.C. 493, affirmed sub nom. *National Bus Traffic Assn.* v. *United States*, 143 F.Supp. 689 (D.N.J. 1956), affirmed, 352 U.S. 1020.

In the *Edwards* case, Division 1 of the ICC, in considering ITCs by bus to see hockey games, stated: [125]

> "Of course, the defendant's hockey tours and the complainant's regular-route service are not wholly noncompetitive. Regular-route carriers provide intercity transportation for persons desiring to attend athletic events. *The complainant has failed to show, however, that the defendant's hockey tours have diverted any traffic*, or that the defendant is merely satisfying, rather than generating, a desire on the part of Erie residents to witness hockey games in Buffalo." (Emphasis added.)

Based on the inherent nature of ITCs, together with the restrictions imposed on them by the Board, and on the experience of the European air ITC program and the U.S. motor bus ITC program, the Board rightly concluded that diversion was not likely to be significant in the ITC proposal now before this Court, and that ITCs are "supplemental" within the meaning of the 1962 Act.[126]

CONCLUSION

In closing, it should be noted that the semantic difficulties in this case have interfered with a meeting of the minds. It is possible, with due care, to discuss this case in terms of "group" travel versus "individually ticketed" travel, provided that "group" is recognized as implying the kind of charter traffic which is primarily newly generated and not diverted from the scheduled service of the route carriers, and "individually ticketed" is recognized as implying the scheduled traffic which belongs to the route carriers, and "individually ticketed" is recognized those terms really mean. Defining these terms narrowly

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[125] *Greyhound Corp.* v. *Edwards*, 96 M.C.C. 112, 124. The *Edwards* case was affirmed by the full Commission on the point here involved, 100 M.C.C. 453 (1966).

[126] App. 345a.

and technically could lead to an unsound result. *Any* planeload of passengers is a "group" in the technical sense; something more is needed to define which groups are proper for the supplementals to carry. Likewise, a technical definition of "individually ticketed" could prevent anyone from traveling on a supplemental carrier, since all charter passengers, single entity, pro rata, and ITC, are given tickets of one sort or another in order to board the plane.

The heart of the problem is one of basic legislative policy, not of semantics—*viz.*, whether allowance of ITCs will cause too much diversion from the scheduled carriers. We submit that the Board rightly decided that the answer was no, and that this answer brings the case into harmony with the real concern of the floor speeches and with the policy of the Act.

For the foregoing reasons the judgment of the court below should be reversed.

Respectfully submitted,

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March 14, 1968

ATTACHMENT A

MINISTRY OF AVIATION

Fifth Report of Air Transport Licensing Board

(FOR YEAR ENDED 31st MARCH, 1965)

Presented to Parliament in Pursuance of Section 8(2) of the Civil Aviation (Licensing) Act, 1960.

Ordered by The House of Commons *to be printed*
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wider interest and may or may not always coincide with the particular interests of British civil aviation. But it is these particular interests which concern us, and we shall continue to exercise our functions with the furtherance of these interests as our objective.

INCLUSIVE TOUR CHARTERS

10. One matter of procedure arising from the Minister's Statement concerns the handling of applications by British operators for inclusive tour charter services on holiday routes. At the end of the year under review, we had received no formal request from the Minister to consider the simplification and expedition of our procedures in this field; but this question had in any event been engaging our attention for some considerable time.*

11. In 1961, when we first addressed ourselves to the licensing of inclusive tours, we were confronted with two rival theories. The theory of the charter companies was that I.T. charters not only catered for people who were not prepared to meet the cost of holidays based on scheduled service rates, but also had the effect, because of the especially economical facilities offered, of attracting others to air travel for the first time. Many of the latter, having been introduced to air travel in this way, would become air-minded and therefore more likely in future to use the scheduled air services as a normal means of travel in preference to rail or boat services. So far therefore from diverting traffic from the scheduled carriers, the charter operators were in the long run conferring a positive benefit upon them by providing an ever-expanding market for their services. The theory of B.E.A., on the other hand, has consistently been that it is obvious that the charter services, operating as they do at peak periods of the year, must inevitably skim off the cream of the holiday traffic which would otherwise accrue to the scheduled services.

12. On our first approach to the problem it appeared to us that to strike the right balance between these opposing views was a matter of some nicety (see paragraph 22 of our first Report). But after four years' experience of the interaction of the two types of traffic, we can find no evidence that inclusive tours have been responsible for any material diversion of traffic from the scheduled carriers. On the contrary, B.E.A.'s total passenger traffic continues to grow at much the same rate as before the inclusive tour charter traffic reached its present proportions.

13. It may be that no major change in procedure will prove necessary. We were glad to see the Minister's statement that it is not in his view desirable to apply restrictions to inclusive tour services. Our decisions on applications for the services in 1965, with marginal variations of emphasis in the light of the evidence presented in respect of the several routes, clearly convey the same general view. One of the most time-consuming elements in previous hearings of these applications has been the repetitive cross-examination addressed by scheduled service operators to witnesses supporting individual applications even though the objectors conceded that their real objection was to the total of capacity applied for to particular destinations rather than to the individual applications as such. We do not seek to deny to the objectors any of their rights under the procedure laid

*Note: The Minister's request was conveyed to us on 8th April, 1965.

down, but we think that, against the background of our accumulated experience, they may well reconsider the substance of their objections, or at any rate find a less onerous way of presenting their views to us. We shall review this question again in the light of experience of the 1965 hearings.

AMENDMENT OF APPLICATIONS

14. There are one or two more general matters of procedure on which we desire to comment in this Report. We alluded in last year's Report to the limits of our willingness to accept amendments to applications in the course of a hearing. The tendency to submit substantial amendments in this way has persisted in some degree, and we re-affirm our determination that any such amendments which in our opinion widen materially the scope of the application or change its character will not be accepted at a hearing.

PRESENTATION OF APPLICATIONS AND OBJECTIONS

15. We have also noted on occasion a regrettable lack of clarity and definition in both the reasons advanced for applications, and in the written grounds of objection. We recognise that the case for an application can seldom be presented comprehensively on an application form; and that, in framing his grounds of objection in writing, an objector can have regard only to that amount of detail of an application that is published in our Licensing Notices. We appreciate also that additional grounds of objection, and additional counter-arguments in defence of an application, can and often do arise during the course of a hearing. By no means, therefore, do we expect that the respective written submissions will necessarily embrace all the factors involved. But that is no reason why, as sometimes happens, virtually no reasons are advanced in the application form for the submission of the application; or, in the case of objections, little or no attempt is made to state the specific grounds on which the objection is based. We, and potential objectors, are entitled to know ab initio what purpose a proposed service is intended to serve. Similarly, in the case of objections, a mere reproduction of all the possible grounds of objection arising from Section 2 (2) of the Act may leave a comfortable freedom of selection on the day, but is patently unfair to the applicant and not helpful to us.

16. It is our view that the requirements of the normal procedure, in asking for a concise indication, in the case of applications, of the existing or potential need or demand for the proposed service and a concise statement, in the case of objections, of the grounds on which the objection is based are essentially reasonable; and we cannot be expected to countenance non-compliance with these requirements which, in the generality of cases, seems to result not so much from any intrinsic difficulty as from an absence of any real effort to comply. In voicing this criticism we should like to make it clear that it is only a minority of cases to which reference is intended; and we do not mean to imply that, for the most part, applicants and objectors do not co-operate fully in facilitating the discharge of our task.

"DUPLICATE" APPLICATIONS

17. During the year we heard a small number of applications for inclusive tour services which virtually duplicated applications we had already refused and were therefore, in effect, appeals against our decisions. In two cases, for special reasons, we granted the later applications; and, if only on this account, we can